NO. 84-1837

Supreme Court, U.S.
FILED
JAN 14 1985
ALEXANDER L. STEVAS
CLERK

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1984

EARL HENDERSON,

*Petitioner,*

*vs.*

SPERDUTO, SPECTOR & VANACORE (formerly Sperduto, Priskie, Spector & Vanacore),

*Respondent.*

## BRIEF IN OPPOSITION FOR RESPONDENT

WILLIAM F. BANKS, ESQ.
*Counsel for Respondent*
61 Smith Avenue
Mount Kisco, NY 10549
(914) 666-2161

*Of Counsel*
ANDERSON, BANKS, MOORE & HOLLIS
P. DANIEL HOLLIS, III, ESQ.

## QUESTION PRESENTED

Whether a justiciable issue exists where there has been no finding that perjury was committed before the arbitrator.

## TABLE OF CONTENTS

QUESTION PRESENTED .....i

COUNTER STATEMENT OF THE CASE .....1

SUMMARY OF ARGUMENT .....4

ARGUMENT .....5

CONCLUSION .....7

IN THE

SUPREME COURT OF THE UNITED STATES

---

October Term, 1984

EARL HENDERSON,

Petitioner,

vs.

SPERDUTO, SPECTOR & VANACORE
(formerly Sperduto, Priskie,
Spector & Vanacore),

Respondent.

---

# BRIEF IN OPPOSITION FOR RESPONDENT

---

## COUNTER STATEMENT OF THE CASE

In 1977, the Petitioner withdrew from the Respondent accounting firm of Sperduto, Spector & Vanacore. Following this withdrawal and after Petitioner established his own accounting practice in which he continued to serve several of Respondent's former clients, Respondent served on Petitioner a Demand for Arbitration dated August 10, 1978. That demand sought arbitration of disputes arising under a contract between the parties dated May 22, 1975 andeffective January 1, 1975. Petitioner served counter demands dated September 26, 1979. Extensive hearings were thereafter held before Arbitrator Martin Baron pursuant to the procedures of the American Arbitration Association. An award was rendered dated September 25, 1980.

That award was confirmed by the New York State Supreme Court over Petitioner's objections. The Supreme Court, Appellate Division, unanimously affirmed the judgment without opinion. Both the Appellate Division and the Court of Appeals summarily denied Petitioner's motion for leave to appeal.

The Petitioner herein contends throughout that Respondent committed perjury before the arbitrator, and that therefore, the New York State Courts should have vacated the award.

However, the simple fact is that no finding of perjury has ever been made in this case. The New York State Supreme court noted certain "inconsistencies" in Respondent's testimony before the arbitration, but specifically ruled that they were insufficient to justify overturning the aribtrator's decision.

Brief of Petitioner, p. 12a. Therefore, the issue of whether a State Court's refusal to consider evidence of a party's prejury during an arbitration proceeding constitutes a due process violation is not properly presented in this case due to the absence of any finding or admission of perjury.

## SUMMARY OF ARGUMENT

There was no perjury committed by Respondent before the arbitrator. Therefore, Petitioner's claim that he was denied due process by the Courts of the State of New York is specious.

## ARGUMENT

### NO JUSTICIABLE ISSUE EXISTS HERE BECAUSE NO PERJURY WAS COMMITTED BY RESPONDENT

Petitioner's argument that the New York State Courts refused to overturn the arbitrator's decision despite Respondent's perjured testimony presupposes that such testimony was indeed perjury. However, Petitioner cannot cite any instance of perjury in the record for, indeed, none can be found. Therefore, Petitioner's conclusory statements regarding Respondent's alleged perjury should be seen for what they are: a smokescreen intended solely to further delay and protract an essentially simple arbitration matter.

Petitioner states, at page 4 of his brief, that his former counsel

"clearly established that [Respondent] had repeatedly perjured himself during the arbitration proceedings by reference to numerous instances in the transcript." Petitioner states, at page 9, that "[e]ach instance of perjury was provable within the transcript of the hearing."

Yet Petitioner does not cite a single, specific instance in the record to support his contentions. New York Supreme Court, which on September 28, 1982 held a hearing on Petitioner's objections to the arbitrator's award, examined Respondent's testimony before the arbitrator and found nothing more than mere "inconsistencies" on Respondent's part. Accordingly, on the basis of the record herein, which in no way supports Petitioner's contention that Respondent perjured himself, there is no justiciable question presented to the Court for review.

## CONCLUSION

Wherefore, Respondent respectfully requests that the petition for a writ of certiorari be denied, with damages pursuant to Rule 49.2 and double costs pursuant to Rule 50.7

Dated: January 8, 1985

Respectfully submitted,

WILLIAM F. BANKS, Esq.
Counsel for Respondent
61 Smith Avenue
Mount Kisco, NY 10549
(914) 666-2161

OF COUNSEL:

ANDERSON, BANKS, MOORE & HOLL
P. Daniel Hollis, III, Esq.